

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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JUDITH FESTA AND ALFRED FESTA,  
Plaintiffs

v.

SIMON PROPERTY GROUP, INC.  
Defendant.

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CIVIL ACTION NO: 2005-10667GAO

**ANSWER AND JURY DEMAND OF DEFENDANT TO  
PLAINTIFFS' COMPLAINT**

**FIRST DEFENSE**

The plaintiffs' complaint fails to state a claim against the defendant upon which relief can be granted in that the defendant has no obligation to pay the plaintiff any amount of the loss or damage alleged.

**SECOND DEFENSE**

The defendant, Simon Property Group, Inc. (so-called), responds to the allegations in the plaintiffs' complaint as follows:

**The Parties and Jurisdiction**

1. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
2. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
3. Defendant admits so much of this paragraph as alleges that Simon Property Group, Inc. (so-called), is a foreign corporation with a principal place of business in Indianapolis, Indiana. The defendant states that the remaining allegations of this paragraph state conclusions of law to which no responsive pleading is required.
4. The defendant denies the allegations contained in this paragraph.
5. The defendant denies the allegations contained in this paragraph.
6. The defendant denies the allegations contained in this paragraph.

**COUNT I**  
**(Negligence)**  
**(Judith Festa v. Simon Property Group, Inc.)**

7. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
8. The defendant denies the allegations contained in this paragraph.
9. The defendant denies the allegations contained in this paragraph.
10. The defendant denies the allegations contained in this paragraph.
11. The defendant denies the allegations contained in this paragraph.

WHEREFORE, the defendant denies that the plaintiffs are entitled to judgment in any amount.

**COUNT II**  
**(Loss Of Consortium)**  
**(Alfred Festa v. Simon Property Group, Inc.)**

12. The defendant denies the allegations contained in this paragraph.

WHEREFORE, the defendant denies that the plaintiff is entitled to judgment in any amount.

**THIRD AFFIRMATIVE DEFENSE**

The defendant, Simon Property Group, Inc. (so-called), denies each and every allegation of the plaintiff's complaint except as specifically admitted above.

**FOURTH AFFIRMATIVE DEFENSE**

The defendant is guilty of no negligence.

**FIFTH AFFIRMATIVE DEFENSE**

By way of affirmative defense, the defendant states that the negligence of plaintiff, Judith Festa, was greater than the alleged negligence of the defendant, that such negligence contributed to her alleged injuries, and that, therefore, the plaintiffs are barred from recovery under Mass. Gen. L. ch. 231, §85.

**SIXTH AFFIRMATIVE DEFENSE**

By way of affirmative defense, the defendant states that plaintiff, Judith Festa, was guilty of comparative negligence and that the damages, if any, recovered by the plaintiffs from the defendant should be reduced in proportion to the said negligence of the plaintiffs in accordance with Mass. Gen. L. ch. 231, §85.

**SEVENTH AFFIRMATIVE DEFENSE**

By way of affirmative defense, the defendant states that if the plaintiffs suffered injuries or damages, as alleged, such injuries or damages were caused by someone for whose conduct this defendant was not and is not legally responsible.

**EIGHTH AFFIRMATIVE DEFENSE**

By way of affirmative defense, the defendant states that if plaintiff, Judith Festa, was injured, it was as a result of the breach of her duty to exercise a high degree of care to protect and ensure her own safety.

**NINTH AFFIRMATIVE DEFENSE**

By way of affirmative defense, the defendant states that the injuries alleged were caused in whole or in part by the negligence of plaintiff, Judith Festa.

**TENTH AFFIRMATIVE DEFENSE**

By way of affirmative defense, the defendant states that the plaintiffs cannot recover against the defendant because the condition on which plaintiff, Judith Festa, was allegedly injured was open and obvious.

**THIRTEENTH AFFIRMATIVE DEFENSE**

By way of affirmative defense, the defendant states that the plaintiffs have misnamed the defendant.

**FOURTEENTH AFFIRMATIVE DEFENSE**

By way of affirmative defense, the defendant says that the plaintiffs are not entitled to recover because of their failure to mitigate damages.

**FIFTEENTH AFFIRMATIVE DEFENSE**

By way of affirmative defense, the defendant says that this Court does not have jurisdiction over this matter.

**JURY CLAIM**

**THE DEFENDANT, SIMON PROPERTY GROUP, INC. (SO-CALLED),  
DEMANDS A TRIAL BY JURY AS TO ALL ISSUES.**

The Defendant,  
Simon Property Group, Inc. (so-called)  
By its attorney,

/s/Sean J. Milano

Sean J. Milano, BBO #551996  
Morrison Mahoney LLP  
250 Summer Street  
Boston, MA 02210  
617-439-7500

**CERTIFICATE OF SERVICE**

I certify that this document has been served upon all counsel of record in compliance with F.R.C.P. this 3<sup>rd</sup> day of May, 2005.

/s/ Sean J. Milano

Sean J. Milano